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on the principal so as to render subsequent payments of interest usurious; but, the limitation fixed by Rev. St. U. S. § 5198, having run against an action for the penalty on the payment of that debt, the maker of the note cannot recover the penalty on subsequent payments of interest.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 332; Dec. Dig. § 59 (2).\* 9 Va.-W. Va. Enc. Dig. 390.]

**11. Banks and Banking (§ 270 (4)\*)—Usury—Penalty—Payments on Subsequent Note.**—The rule that a renewal note executed after discharge of all of the usury is purged of the usury, while it does not apply to a suit by a national bank on a usurious note under Rev. St. U. S. § 5198, providing that the bank shall forfeit all interest, legal as well as usurious, does apply to an action under the latter part of the section to recover the statutory penalty of double the amount of the interest paid.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. § 1026; Dec. Dig. § 270 (4).\* 2 Va.-W. Va. Enc. Dig. 331.]

Appeal from Corporation Court of Lynchburg.

Separate actions by the Lynchburg National Bank against E. M. Baker and others and by Henry Silverthorn Jewelry Company against the Lynchburg National Bank. Judgment for the plaintiff in the first action and for defendant in the second action, and the defeated parties appeal. Judgments affirmed.

*Amonette & Bailey* and *R. C. Blackford*, all of Lynchburg, for appellants.

*Wilson & Manson*, of Lynchburg, for appellees.

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CARY *v.* HARRIS.

Jan. 11, 1917.

[91. S. E. 166.]

**1. Contracts (§ 99 (3)\*)—Fraud (§ 58 (1)\*)—Rescission—Burden of Proof.**—A party alleging fraud must prove it by clear and convincing testimony particularly in cases involving the rescission of a contract.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 449-453, 1199; Dec. Dig. § 99 (3); Fraud, Cent. Dig. § 55; Dec. Dig. § 58 (1).\* 6 Va.-W. Va. Enc. Dig. 502.]

**2. Compromise and Settlement (§ 11\*)—Favor of Law.**—Compromise agreements are favored by the law.

[Ed. Note.—For other cases, see Compromise and Settlement, Cent. Dig. §§ 51-53; Dec. Dig. § 11.\* 3 Va.-W. Va. Enc. Dig. 40.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**3. Compromise and Settlement (§ 3\*)—Fraud.**—A party who made a deliberate settlement of all alleged fraud upon him with his eyes wide open was bound by his contract, since parties may settle frauds as well as anything else if they act with knowledge of the facts.

[Ed. Note.—For other cases, see *Compromise and Settlement*, Cent. Dig. §§ 5, 6; Dec. Dig. § 3.\* 3 Va.-W. Va. Enc. Dig. 42.]

Appeal from Chancery Court of Richmond.

Bill by J. W. Harris against W. M. Cary. From a decree for complainant, defendant appeals. Decree reversed, and decree entered dismissing complainant's bill.

*Jas. E. Cannon* and *S. A. Anderson*, both of Richmond, for appellant.

*G. A. Hanson* and *P. E. Hardin*, both of Richmond, for appellee.

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CITY OF DANVILLE *v.* LIPFORD.

Jan. 11, 1917.

[91 S. E. 168.]

**1. Appeal and Error (§ 1005 (3)\*)—Review—Conflicting Testimony.**—If by disregarding the testimony of defendant the evidence is sufficient to sustain a finding of negligence on his part, no error is committed by refusing to grant a new trial urged on the ground that such finding is contrary to the evidence.

[Ed. Note.—For other cases, see *Appeal and Error*, Cent. Dig. §§ 3860-3876, 3949; Dec. Dig. § 1005 (3).\* 1 Va.-W. Va. Enc. Dig. 605.]

**2. Master and Servant (§ 291 (1)\*)—Injuries to Servant—Instructions.**—Instructions given in an action by a workman against a city to recover for injuries sustained in stepping through a trestle of the city gas plant held proper.

[Ed. Note.—For other cases, see *Master and Servant*, Cent. Dig. § 1133; Dec. Dig. § 291 (1).\* 7 Va.-W. Va. Enc. Dig. 707.]

**3. Trial (§ 260 (1)\*)—Instructions Already Given.**—Denial of a requested instruction that the "unbending test" of negligence is the standard established by usage in like business and that plaintiff must show by a preponderance of evidence that such standard was not lived up to was not error, where the court otherwise instructed that "ordinary or reasonable care is such care as other reasonably prudent companies use in conducting like business."

[Ed. Note.—For other cases, see *Trial*, Cent. Dig. § 651; Dec. Dig. § 260 (1).\* 7 Va.-W. Va. Enc. Dig. 707.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.